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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/863,845	05/23/2001	Herve F. Bouix	2870/296	9937
7590 01/27/2004				
KAREN A. LOWNEY ESTEE LAUDER COMPANIES 125 PINELAWN ROAD MELVILLE, NY 11747			EXAMINER MAI, TRI M	
			ART UNIT 3727	PAPER NUMBER 20
DATE MAILED: 01/27/2004				

Please find below and/or attached an Office communication concerning this application or proceeding.

**Office Action Summary**

Application No.

09/863,845

Applicant(s)

BOUIX ET AL.

Examiner

Tri M. Mai

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3727

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☐ Responsive to communication(s) filed on \_\_\_\_.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-17 is/are pending in the application.
- 4a) Of the above claim(s) 11 and 13-17 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-10 and 12 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. §§ 119 and 120**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
a) ☐ All b) ☐ Some \* c) ☐ None of:  
1. ☐ Certified copies of the priority documents have been received.  
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_.  
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).  
\* See the attached detailed Office action for a list of the certified copies not received.
- 13) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application) since a specific reference was included in the first sentence of the specification or in an Application Data Sheet. 37 CFR 1.78.  
a) ☐ The translation of the foreign language provisional application has been received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121 since a specific reference was included in the first sentence of the specification or in an Application Data Sheet. 37 CFR 1.78.

**Attachment(s)**

- 1) ☒ Notice of References Cited (PTO-892) 4) ☐ Interview Summary (PTO-413) Paper No(s). \_\_\_\_
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948) 5) ☐ Notice of Informal Patent Application (PTO-152)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449) Paper No(s) 16. 6) ☐ Other: \_\_\_\_\_

**DETAILED ACTION**

***Election/Restrictions***

1. Claims 11, and 13-17 are withdrawn from further consideration by the examiner, 37 CFR 1.142(b), as being drawn to non-elected invention as set forth in the previous Office Action.

***Claim Rejections - 35 USC § 102***

2. Claims 1, 2, 7, and 10 are rejected under 35 U.S.C. 102(b) as being anticipated by either Wallace (3007594) or MacDonald et al. (2562726), either Wallace or MacDonald teaches a container having a first thin-walled bottle with a neck extending from a storage portion, and a minimum wall thickness, and a molded over resin body having a maximum wall thickness at least three times the minimum wall thickness of the storage portion.
3. Claims 1, 2, 4, 5, and 7-10 are rejected under 35 U.S.C. 102(b) as being anticipated by Barriere (3,663,259), or in the alternative, under 35 U.S.C. 103(a) as being unpatentable over Barriere in view of either Nohara (4646925) or Wallace (3007594). Barrier teaches a container having a first thin-walled bottle with a neck 2 extending from a storage portion, and a minimum wall thickness, a resin body 5 having a maximum wall thickness at least three times the minimum wall thickness of the storage portion. With respect to the outer over molded outer resin, the method of injection molding do not impart any structure over resin body of Barriere.

Regarding claim 2, the bottle is made from glass (col. 1, lines 51).

Regarding claim 5, the inside body is substantially round as claimed.

Regarding claim 9, note the indicia 3 being formed in the bottle. (col. 1, lines 30).

In the alternative, either Nohara or Wallace teaches that it is known in the art to provide the outer resin outer body by injection molding as shown in Fig. 5. It would have been obvious

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to one of ordinary skill in the art to provide the outer body by injection molding in Barriere as taught by Nohara to provide an alternative method for making the outer layer.

***Claim Rejections - 35 USC § 103***

4. Claim 3 is rejected under 35 U.S.C. 103(a) as being unpatentable over the Barriere rejection, as set forth in paragraph 3, in view of Frye et al. (4138027). Barriere meets all claimed limitations except for the inner bottle being made from aluminum. Frye teaches that it is known in the art to make the inner bottle out of aluminum (col. 2, line 64). It would have been obvious to one of ordinary skill in the art to make the inner bottle out of aluminum in Barriere as taught by Frye to provide the desired properties for the inner bottle.

5. Claim 6 is rejected under 35 U.S.C. 103(a) as being unpatentable over the Barriere rejection, as set forth in paragraph 3, in view of Shaffer (3006780). Barriere meets all claimed limitations except for the resin body being square. Shaffer teaches that it is known in the art to provide an outer body being square. It would have been obvious to one of ordinary skill in the art to provide the resin body being square in Barriere as taught by Shaffer to provide added stability.

6. Claim 12 is rejected under 35 U.S.C. 103(a) as being unpatentable over the Barriere rejection, in view of Frye et al., as set forth above, and further in view of Reinhard (3870186). The modified container of Barriere meets all claimed limitations except for the inner bottle being anodized. Reinhard teaches that it is known in the art to anodize the inner surface of a body. It would have been obvious to one of ordinary skill in the art anodize the inner surface of the modified container of Barriere to provide the desired finish.

***Response to Arguments***

7. Please note that the Associate Power has been physically entered.
8. Applicant's arguments with respect to claims have been considered but they are not persuasive.

Applicant argues that the claimed bottle is made from injection molding. It is submitted that the limitation "a resin body injection over-moulded" do not impart any structure over the container of Barriere. In other words, the resin, or plastic, in final container is no different from the plastic in Barriere.

Furthermore, as set forth in the previous Office Action, the patentability of a product does not depend on its method of production. If the product in the product - by - process claim is the same as or obvious from a product of the prior art, the claim is unpatentable even though the prior product was made by a different process." In re Thorpe , 227 USPQ 964, 966 (Fed. Cir. 1985). See MPEP 2113.

With respect to the combination over either Nohara (4646925) or Wallace, it is submitted that one of ordinary skill the art recognize that injection molding is well known and to use that this particular method to facilitate the manufacturing of the bottle is within one of ordinary skill in the art.

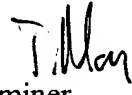
***Conclusion***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Tri M. Mai whose telephone number is (703)308-1038. The examiner can normally be reached on 7:30am-5:00pm.

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If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Lee W Young can be reached on (703)308-2572. The fax phone numbers for the organization where this application or proceeding is assigned are (703)305-3579 for regular communications and (703)305-3579 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703)308-1148.

Tri M. Mai   
Primary Examiner  
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